

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

R.H., BY HIS PARENTS AND NEXT FRIENDS, EMILY AND MATTHEW H. §
§
§
Plaintiff, §
§
§
v. §
§
§
PLANO INDEPENDENT §
SCHOOL DISTRICT §
§
§
Defendant. §

CASE NO. 4:06cv352

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

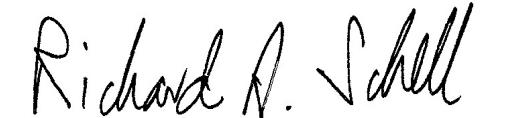
Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On March 7, 2008, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendant's Motion for Summary Judgment on the Administrative Record (Dkt. 15) be GRANTED, that Plaintiff's Motion for Summary Judgment on the Administrative Record (Dkt. 38) be DENIED, that the findings of the Special Education Hearing Officer for the State of Texas in this matter be affirmed, and that each party should be ordered to bear its own costs and fees.

The court has made a *de novo* review of the objections raised by Plaintiff and Defendant's response to those objections. The court finds that the Magistrate Judge's analysis and conclusion

that PISD provided Plaintiff with a FAPE in accordance with IDEA¹ and that Plaintiff was accordingly not entitled to reimbursement for his private schooling comports with governing Fifth Circuit authority. Therefore, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of the Plaintiff are without merit. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court, and Defendant's Motion for Summary Judgment on the Administrative Record (Dkt. 15) is GRANTED, Plaintiff's Motion for Summary Judgment on the Administrative Record (Dkt. 38) is DENIED, the findings of the Special Education Hearing Officer for the State of Texas in this matter are affirmed, and each party is ordered to bear its own costs and fees.

IT IS SO ORDERED.

SIGNED this the 31st day of March, 2008.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE

¹Plaintiff has complained that the Magistrate Judge failed to address his alleged procedural violations of the IDEA. The court agrees that the Fifth Circuit has treated the failure to provide a continuum of educational services as a procedural, rather than substantive, violation of IDEA. *Daniel R.R. v. State Board of Educ.*, 874 F.2d 1036, 1043 (5th Cir. 1989). However, the court notes that Plaintiff's briefing in this case fails to make specific mention of "procedural violations" and Plaintiff's own analysis focuses on the alleged substantive violations. Even if this court were to disregard Defendant's argument that Plaintiff has waived such procedural errors and characterize some of Plaintiff's arguments as procedural rather than substantive, the analysis within the Magistrate Judge's report adequately addresses Plaintiff's complaints regarding the continuum of educational services provided, including the provision of supplementary services and alternative placements. Further, having reviewed the report and the administrative record, the court finds that the record does not indicate any procedural or substantive violations of the IDEA by PISD here.